

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
DECEMBER 7, 2021**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Tobias Liechti, Cal Dyck and Roger Noble. Gina Klempel had an excused absence. Erik Mack and Erin Appert represented the Flathead County Planning & Zoning Office.

There were 5 members of the public in attendance at the meeting and 13 members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:00 PM**

Klempel motioned, seconded by Liechti, to approve the November 2, 2021 minutes as amended.

The motion passed unanimously by roll call vote.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:01 PM**

None

**WINKEL FAMILY
TRUST
(FZV-21-07)
6:01 PM**

A request from Winkel Family Trust for a variance to Section 3.10.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to the front yard setback for a principal structure. The subject property is zoned R-1 (Suburban Residential) and SC (Scenic Corridor) and is located at 301 Marco Bay Road, Somers, MT within the Fish Hatchery and Scenic Corridor Zoning Districts.

**STAFF REPORT
6:02 PM**

Erin Appert reviewed the Staff Report FZV-21-07 for the board.

**BOARD QUESTIONS
6:03 PM**

Liechti addressed that this was the first variance for a setback where the findings were positive and wondered what was different this time around. Appert said she could not speak to the others but this lot was small, irregular shaped lot, and already had a house on it which limited the building opportunities. This was one of the only ones in the neighborhood that did not have a garage.

**APPLICANT
PRESENTATION
6:04 PM**

Josh Johns, 1130 Nucleus Ave, was the technical representative for the Winkel Family. He explained what was currently on the property and their desire to add a 2 car garage. It had been determined there was no room on the other side of the house without encroaching into the front yard setbacks. There was an existing parking pad in the location of the proposed garage which they wanted to use but, by doing so, it would place a portion of the garage within 10 feet from the front property line. The lot was an irregular shape with a sharp point. Marco Bay Road was a private road and a dead-end and served eleven properties. The road cut into the lot and, once the setbacks were applied, it greatly reduced the buildable area. The size of the garage was similar to others in the area. They believed the review criteria for a variance had been met.

**BOARD QUESTIONS
6:07 PM**

None

**AGENCY COMMENTS
COMMENT
6:07 PM**

No public agencies were present to comment. Written comments were reviewed in the staff report.

**PUBLIC COMMENT
6:07 PM**

None

**BOARD DISCUSSION
6:08 PM**

Noble felt it was a well laid out application; there were no apparent safety issues and he concurred with the staff's report.

Netteberg agreed with Noble and felt it made sense.

Liechti agreed with Noble and Netteberg that it was reasonable but he was apprehensive that the staff report was so different than any other variance requests they have reviewed. He recalled previous variances that had been reviewed that were similar in nature but were denied; even after adjusting findings to meet criteria. He wished staff were more lenient with the reports in the future because this, and other previous ones, seemed similar in nature. He was in favor of this application but hesitant on the precedence that had been set before.

Dyck referenced a previous variance request that were similar but contained a water line easement which limited use of the lot. He noted the lot in subject was created prior to zoning and the house already existed.

Liechti felt there was a conundrum of the staff reports varying to the degree that

he saw, however, he noted that he was in favor of this application.

Noble referenced a variance request in Bigfork which had some other extending circumstances; including water, sewer, and road easements. There were also safety issues and this application did not have any of those. Noble felt that the staff had done justice on that one as they had on this one as well.

**MAIN MOTION TO
ADOPT F.O.F.
(FZV-21-07)
6:14 PM**

Dyck made a motion, seconded by Netteberg, to accept Staff Report FZV-21-07 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FZV-21-07)
6:14 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FZV-21-07)
6:15 PM**

Dyck made a motion, seconded by Liechti, to approve FZV-21-07.

**ROLL CALL TO
APPROVE
(FZV-21-07)
6:15 PM**

Motion passed unanimously on a roll call vote.

**ROSECRANS
(FACU-21-69)
6:16 PM**

A request from Jamie Frank, on behalf of William Rosecrans and Chris Rosecrans, for the establishment of 'Short-term Rental Housing' on property located within the Rural Whitefish Zoning District. The property is located at 174 Morrison Road near Whitefish, MT and is zoned R-2.5 (Rural Residential). Per Section 2.06.045(5) of the Flathead County Zoning Regulations (FCZR), if written opposition from adjacent property owners was received prior to the end of the comment period and the expressed concerns of opposition cannot be resolved by the applicant or by conditions of approval, the Flathead County Board of Adjustment is required to review the request.

**STAFF REPORT
6:17 PM**

Erik Mack reviewed the Staff Report FACU-21-69 for the board.

BOARD QUESTIONS
6:18 PM

Dyck asked for clarification on whether or not it was on a well or water system. An unidentified man in the audience said it was on a well.

**APPLICANT
PRESENTATION**
6:19 PM

Chris Rosecrans, 174 Morrison, explained the intent behind buying the property and what they proposed to do with it. Their ultimate goal was to have it as a family property to spend time at. They also wanted to invest in the property. He said, first and foremost, he wanted to be a good neighbor and wanted to address some of the concerns that were brought up. They had looked into bear proof garbage cans. He understood the concern of unruly tenants but had a property manager on call to take care of things as needed. They were trying to address some of the fire safety concerns by getting bids for forest management and they had removed the fire pit on the property and put in a propane pit on their patio.

BOARD QUESTIONS
6:23 PM

Liechti asked why it was an “after the fact” permit and Rosecrans said they had looked into the ability to short-term rent but did not understand the timing of permitting in the county. Once they understood what was needed, they stopped booking the short-term rentals.

Dyck asked about the concern of people walking from their property to other properties. That surprised Rosecrans and he described the topography of the land and how there was not a clear delineation of where the property line was. They could not speak to it because he could not see another house from their house and continued to discuss in detail.

Noble asked about the hours of operation and what had been decided. Rosecrans deferred to the management company as they were overseeing it.

PUBLIC COMMENT
6:28 PM

Jamie Frank at Glacier Getaways, *no physical address given*, represented the applicants as the property manager. They discussed quiet hours being standard and how they came to that conclusion by working with HOAs to accommodate the most desired quiet hours. She discussed the rules and standards put before the tenants. She discussed the process of getting the Conditional Use Permit (CUP) application and that she was in compliance to begin renting it out as a short-term rental.

Sharon Morrison, 400 Morrison Rd., spoke in opposition of the application. She discussed the location of the property and the dense timber in the area. She implied it was not a small operation but a business to pay off a house by renting in a non-commercial neighborhood. She was concerned about fire, wildlife, and security. She discussed each in great detail.

Dorothea La Donne, 816 Latigo Ln, spoke in opposition of the application. She was concerned about the traffic safety and the narrow roads in the area.

Lorelle Kitzmiller, 832 Cantrell Ct., spoke in opposition of the application. She had moved up here 15 months ago. She agreed with Thea and reiterated that she had no idea how dangerous the roads were in icy conditions and was concerned that others [visiting] would be in the same situation. She was concerned about the safety.

APPLICANT REBUTTAL
6:47 PM

Rosencrans reiterated that, when it came to fire and road safety, he understood and addressed both concerns. He discussed fire mitigation to address the concerns including irrigating the property and discussed this in great detail. He also was concerned about the traffic safety and offered to amend instructions for future tenants to emphasize the point.

BOARD DISCUSSION
6:50 PM

Netteberg was still confused over the Board of Adjustment's authority over CCandRs. Mack replied they had none and it was a civil matter.

Dyck said they could address the community impact on safety and welfare. He reiterated that a CUP was not a right, it was a privilege. . He felt strongly that they had to address the issue of short-term rentals. He felt like it was a tremendous challenge and discussed these things in great detail. He felt [the appropriate permitting] was not a streamlined process because there were different agencies.

Netteberg asked if the applicant had intentionally looked to purchase a property they could short-term rent or if it was an afterthought. They looked for a property, in a rural area, that did not have an HOA or covenants so that they could short-term rent it out. They paid more money for a house so that they could do so. It had been marketed by realtors as such and was something that they had seeked out ahead of time.

Dyck asked for clarification as to whether or not the property had covenants because public comments inferred otherwise. Some [covenants] were not always cut and dry. He discussed that the property allowed them to apply for a CUP, he read through the FOF and agreed that there was not much ambiguity in what the Planning Office had decided. He understood the dilemma.

Dyck asked Mack if there were any restrictions on the property. Mack said that they did not look into CCandRs [because they were a civil matter] and they had not received any comments that addressed CCandRs.

Liechti felt there was a lot of finger pointing and antidotal evidence. He did not object to this proposal.

Dyck addressed the issue of creating signage to delineate the property line so that people would not trespass onto other people's property. Rosencrans discussed the topography of his land and the details of his property in general. They discussed this in detail.

Netteberg asked if the fire pit had been removed in which Rosencrans replied that they had the previous fire pit taken out and had since bought a propane firepit for the patio.

Dyck asked if he had met with the Whitefish Fire Dept. to discuss thinning and reducing fire fuel. Rosencrans discussed the steps he had taken to make it a safer place.

Dyck wanted to propose the concept of how to address the issue if they have bad tenants. He was hoping to add a condition that, if there were 3 recognized violations, the permit would be revoked for 1 year. Rosencrans agreed to that should there be legitimate violations.

The board discussed adding conditions, including Condition #15, #16, and #17 which would address a three strike rule, working with the Whitefish Fire Department, and delineation of the property line. The board discussed this with the applicant at great length.

**MAIN MOTION TO
ADOPT F.O.F.
(FACU-21-69)
7:18 PM**

Noble made a motion, seconded by Netteberg, to accept Staff Report FACU-21-69 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FACU-21-69)
7:18 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FACU-21-69)
7:18 PM**

Dyck made a motion, seconded by Liechti, to approve FACU-21-69 with the addition of the following conditions:

15. If there are three verified violations within a two-year period, the permit shall be suspended for a period of one year.

16. The applicant must meet with the City of Whitefish Fire Department to come up with an acceptable risk management plan.

17. The applicant is required to install signage near the property boundary.

**ROLL CALL TO
APPROVE
(FACU-21-69)
7:18 PM**

Motion passed unanimously on a roll call vote.

**BEVERIDGE
(FACU-21-74)
7:20 PM**

A request from Christa & William Beveridge, for the establishment of 'Short-term Rental Housing' on property located within the Rural Whitefish Zoning District. The property is located at 825 Cantrell Ct., near Whitefish, MT and is zoned R-2.5 (Rural Residential). Per Section 2.06.045(5) of the Flathead County Zoning Regulations (FCZR), if written opposition from adjacent property owners was received prior to the end of the comment period and the expressed concerns of opposition cannot be resolved by the applicant or by conditions of approval, the Flathead County Board of Adjustment is required to review the request.

**STAFF REPORT
7:20 PM**

Erik Mack reviewed the Staff Report FACU-21-74 for the board.

**BOARD QUESTIONS
7:23 PM**

Noble noted it was zoned as R-2.5 and some comments referred to it as WCR Zoning, which referenced to when it was under Whitefish jurisdiction but was no longer the case.

Dyck had questions for Mack about the CCandRs specifically about the language regarding bed and breakfasts.

**APPLICANT
PRESENTATION
7:25 PM**

Christa Beveridge, 803 Walkwood Circle, was the applicant. She explained that it was very similar to the previous application. They had three young kids and wanted to raise their kids in a place like this. Their jobs did not currently allow this but renting it out short-term would allow them to use the property during the summer and any holidays. Her realtor informed them the CCandRs allowed short-term rentals. They had no idea it would raise the opposition from the neighbors. She stated the CCandRs were outside of the BOA's jurisdiction and referenced a supreme court's ruling that, unless there was very specific language, they could not deny a property owner's right to use their property. She discussed this at length

**PUBLIC COMMENT
7:28 PM**

Heather Young with Vacasa, 233 2nd Ste E, was the property manager. She discussed their process used to vet the tenants.

Sharon Morrison, 400 Morrison Rd., spoke in opposition of the application. She discussed the legal language of CCandRs. She agreed the BOA had no jurisdiction over CCandRs but discussed the process and implied the county would be sued if the applicants were to rent this out as a short-term rental.

Lorelle Kitzmiller, 832 Cantrell Crt., spoke in opposition of the application. She said they had several instances where vehicles were going to their property. The driveways were confusing. She was concerned that the value of her property would be diminished. She was concerned about wildlife. She was concerned

about the traffic impact with the narrow roads.

Dorothea Le Donne, 816 Latigo Ln, spoke in opposition of the application. She agreed with what had been shared earlier. She bought into the subdivision because she felt the covenants would protect her. She wanted the private property and roads to be respected. She was concerned about the road maintenance. She reiterated that CCandRs said that it was for single family residence only. She felt that the neighbors had rights as well.

Marguerite Kaminski, 4655 North Fork Rd., spoke in opposition of the application. She had previously owned the home and was concerned about the health and safety of those in the area. Things had changed with the influx of people. She discussed the traffic impact on the narrow roads. She was concerned about the welfare of the neighborhood.

APPLICANT REBUTTAL
7:46 PM

Beveridge discussed the process of buying the property and what was told to them by the sellers and the realtors involved regarding CCandRs. She also addressed the other concerns brought up. They had mitigation measures to address fire safety. She stated that if the HOA felt they needed to bring them to court then that was fine but they did not see what would be gained by bringing legal action.

Netteberg asked if they were only going to rent it out for the summer. Beveridge said that she had implied that they would be using it during the summer.

Dyck asked if they wanted to rent it out to families or 6 people. Mack interjected that they could not regulate occupancy. Beveridge said they certainly wanted to market it towards families (i.e. with child bedrooms).

BOARD DISCUSSION
7:52 PM

Netteberg understood they did not have any authority with CCandRs but it was hard to not recognize them. Dyck said they could not enforce the CCandRs but they were written with the intent of creating structure for a community.

Netteberg's clarification came down to if a short-term rental was a business. Mack discussed what the zoning regulations stated.

Liechti wanted to add the three conditions that were added to the previous application as well. He wanted to consider in the future that unclear boundaries needed signage.

Netteberg said this was another one where their hands were tied.

Dyck asked Mack if he knew anything about the court decision and how it might impact this decision. Mack said the regulations stated they were not going to address it and it was between HOA and the landowners. The Commissioners

removed themselves from being involved with CCandRs. The staff and board continued to discuss this at great length.

Noble felt that it was clear that BOA did not have the responsibility to enforce covenants. There may be lawsuits involved but it would fall more on the realtor. The definitions of bed and breakfast vs. short-term rentals were different.

Netteberg's opinion was that it was going to go through the county but was going to be a civil issue.

Noble felt adding the conditions would be sufficient in this case.

Liechti addressed condition #8 and the board felt they should stick with "fires prohibited" because it was a smaller lot. Noble felt that they would have to meet the requirements suggested by the fire department and it should be conditioned as such.

Dyck said the problem was growth and the consequences [of such] that they were dealing with. They had certain requirements that they had to stay within.

Noble understood and empathized with comments and concerns regarding traffic but they were subjective opinions as opposed to data from something such as an engineer's report.

**MAIN MOTION TO
ADOPT F.O.F.
(FACU-21-74)
8:05 PM**

Liechti made a motion, seconded by Noble, to accept Staff Report FACU-21-74 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FACU-21-74)
8:06 PM**

Motion passed on a 4-1 roll call vote, Dyck dissented.

**MOTION TO APPROVE
(FACU-21-74)
8:07 PM**

Netteberg made a motion, seconded by Liechti, to approve FACU-21-74 as amended.

**ROLL CALL TO
APPROVE
(FACU-21-74)
8:07 PM**

Motion passed unanimously on a roll call vote.

OLD BUSINESS
8:12 PM

None

NEW BUSINESS
8:12 PM

Mack informed them the Planning Office will have a part-time Code Compliance Tech to assist the Code Compliance Officer. That will leave us short with 1 open position for a Planner III position.

ADJOURNMENT
8:16 PM

The meeting was adjourned at approximately 8:16 pm on a motion by Dyck. The next meeting will be held at 6:00 pm on January 4, 2021.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 12/7/2021